

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No. 3:09-cv-00357-FDW-DCK

OFFICE DEPOT, INC.;

Plaintiff,

vs.

AMERICAN PRODUCT DISTRIBUTORS,
INC. and C. RAY KENNEDY;

Defendants.

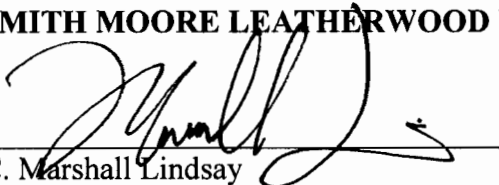
**DECLARATION OF
C. MARSHALL LINDSAY**

Now comes C. Marshall Lindsay and declares as follows:

1. I am over 18 years of age and I am competent to make this Declaration.
2. I am counsel of record for Office Depot, Inc. ("Office Depot") in this action.
3. On November 4, 2009, I sent the attached letter to counsel for Defendants, Sara W. Higgins, on behalf of Office Depot by the means set forth therein. A copy of the letter is attached hereto as Exhibit "A," and incorporated herein by reference.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the 4th day of November, 2009.

SMITH MOORE LEATHERWOOD LLP



C. Marshall Lindsay
N.C. Bar No. 25686
525 N. Tryon Street, Suite 1400
Charlotte, NC 28202
Telephone: (704) 384-2600
Fax: (704) 384-2800
Attorney for Office Depot, Inc.

EXHIBIT A



SMITH MOORE LEATHERWOOD

November 4, 2009

Via Email and U.S. Mail

Sara W. Higgins
Higgins Law Firm, PLLC
6525 Morrison Boulevard, Suite 402
Charlotte, NC 28211

Re: Vendor Purchasing Agreements between American Product Distributors,
Inc. and Office Depot, Inc.
Our File No. 05011113.000002

Dear Sally:

This letter references mine dated October 15, 2009, to your client, American Product Distributors, Inc. ("APD"), regarding the three Vendor Purchasing Agreements, as defined therein.

Following my letter, Office Depot, Inc. ("Office Depot") was informed by Domtar Paper Company, LLC ("Domtar") that Domtar has a perfected, first priority security interest in any and all accounts and other obligations allegedly owed by Office Depot to APD related to Products purchased by APD from Domtar and sold to Office Depot. Based on this information, Office Depot currently intends to pay certain amounts allegedly due APD according to Office Depot's records pursuant to the Vendor Purchasing Agreements, consistent with the terms therein, and consistent with APD's prior instructions contained in the attached notification letter from APD dated July 30, 2003.

Currently, Office Depot believes that Domtar intends to release its security interest on a fraction of the amounts allegedly due APD pursuant to the Vendor Purchasing Agreements. At this point, Office Depot believes this amount will be less than one percent of the amounts allegedly due APD pursuant to the Vendor Purchasing Agreements.

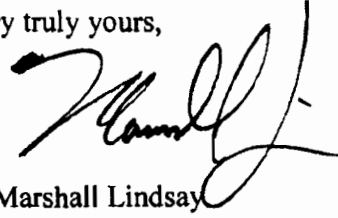
Once Office Depot confirms the amount of the set off and Domtar releases its security interest in this amount, Office Depot intends to set off this amount pursuant to Section 9.0(D)(5) of the Vendor Purchasing Agreements. Of course, this potential set off would be subject to the potential claims of any additional secured parties claiming an interest in such funds. Since the amount of this set off has yet to be determined and Domtar has yet to release its security interest in this potential amount, APD continues to owe Office Depot the full amount of Office Depot's

C. Marshall Lindsay | Direct 704.384.2648 | Fax 704.384.2924 | marshall.lindsay@smithmoorelaw.com
Smith Moore Leatherwood LLP • Attorneys at Law
525 N. Tryon Street Suite 1400 Charlotte, NC 28202 • 704.384.2600 • www.smithmoorelaw.com
Atlanta, GA • Charlotte, NC • Greensboro, NC • Greenville, SC • Raleigh, NC • Wilmington, NC

Sara W. Higgins
November 4, 2009
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claim in the action now pending in the United States District Court for the Western District of North Carolina.

Very truly yours,

A handwritten signature in black ink, appearing to read "C. Marshall Lindsay", with a stylized flourish at the end.

C. Marshall Lindsay

Enclosure
CML/cag

AMERICAN PRODUCT DISTRIBUTORS INCORPORATED

*Nationwide Sales and Distribution of
Business Imaging Supplies*

NOTICE

July 30, 2003

To: OFFICE DEPOT

Ladies and Gentlemen:

Reference is hereby made to Security Agreement dated as of August 1, 2003 (the "Agreement") between us and Weyerhaeuser Company ("Weyerhaeuser").

You are hereby notified that pursuant to the Agreement, we have granted to Weyerhaeuser a security interest in all of our right, title, claims, interest and benefits of, in, to and under all Accounts (as defined in Section 9-102(a)(2) of the Uniform Commercial Code as currently in effect in the State of Washington (the "UCC")) relating to our sale of goods to you.

We direct you to make all payments on such Accounts to APD at the following address:

American Product Distributors, Inc.
Bank of America Lockbox Services
P. O. Box 409701
Lockbox 409701
Atlanta, GA 30384-9701

This Notice is irrevocable and cannot be canceled or amended without the written consent of Weyerhaeuser.

We hereby request you acknowledge receipt of this Notice by signing below.

Very truly yours,

AMERICAN PRODUCT DISTRIBUTORS
INCORPORATED

By: Cy Kennedy
Name: Cy Kennedy
Title: Chief Financial Officer

WE HEREBY ACKNOWLEDGE THE ABOVE-REFERENCED
GRANT OF A SECURITY INTEREST BY AMERICAN PRODUCT DISTRIBUTORS
INCORPORATED TO WEYERHAEUSER COMPANY:

OFFICE DEPOT

By: [Signature]
Name: BLANCA C. PUERTA
Title: A/P MANAGERS

N1810182



8227 Arrowridge Blvd, Suite E ★ Charlotte, NC 28273 ★ 704/522-9411 ★ Fax 704/522-9413

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing DECLARATION OF C. MARSHALL LINDSAY has been duly served this 4th day of November, 2009, by the method indicated below:

SMITH MOORE LEATHERWOOD, LLP

/s/ C. Marshall Lindsay
C. Marshall Lindsay
Attorney for Office Depot, Inc.

SERVED BY CM/ECF:

Sara W. Higgins
sally@thehigginslawfirm.com
Attorney for Defendants